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#6

In re Application of  
Swartz  
Application No. 09/750,480  
Filed: December 28, 2000  
For: METHOD AND APPARATUS TO  
MONITOR LOADING USING  
VIBRATION

Letter re Publication

**COPY MAILED**

**OCT 16 2001**

**OFFICE OF PETITIONS**

This is in reply to "Applicant's Request for Exception to Publication," which was filed on June 4, 2001.

Applicant's request cannot be granted.

35 U.S.C. 122(b) requires the United States Patent and Trademark Office to publish utility and plant applications filed on or after November 29, 2000, unless, on filing, applicant requested nonpublication with the required certification. The statute also permits the Office to publish applications filed before November 29, 2000, when applicant requests publication of such an application.

The Office has no statutory authority to accept a nonpublication request that was not filed on the filing date of the application. The application remains scheduled to publish on January 10, 2002.

If applicant desires to avoid publication, he may file a continuation application under 37 CFR 1.53(b) claiming benefit to the instant application under 35 U.S.C. 120 with a nonpublication request (PTO/SB/35 enclosed) and, thereafter, abandon the application. Applicant may file a letter of express abandonment under 37 CFR 1.138(c), including a petition fee (\$130.00) (PTO/SB/24 enclosed). This petition should be mailed to Box PGPUB-ABD. Alternatively, applicant may file a letter of express abandonment under 37 CFR 1.138(a), which is mailed to the normal address, but since express abandonments under 37 CFR 1.138(a) are not treated special, it might not necessarily avoid publication. To avoid publication, the letter of express abandonment must be received by the Office and recognized in time to avoid publication. For further information see the "Q's & A's" under the American Inventors Protection Act of 1999 (AIPA), which is under Patents on the USPTO website, and posted at: <http://www.uspto.gov>

The application is being returned to Group Art Unit 3641.

Telephone inquiries regarding this communication should be directed to the undersigned at (703)308-8122.

Mark Polutta  
Legal Advisor  
Office of Patent Legal Administration  
Office of the Deputy Commissioner  
for Patent Examination Policy

Enclosures: Nonpublication Request form (PTO/SB/35)  
Express Abandonment form (PTO/SB/24)